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(2)

"allotted by the High Court Legal Services Committee" Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR,M.P.

Criminal Appeal No. 3003 of 1999.

(13959)

APPELLANT :- (IN JAIL)

Lakhmoo S/o Pandu Madiya, aged about 25 years, R/o Chhindgur, P.S. Darbha, District- Bastar, M.P.

-versus-

RESPONDENT:

The State of Madhya Pradesh.

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374(II) OF THE CODE OF CRIMINAL PROCEDURE.

(13)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Criminal Appeal No. 3003 of 1999

Appellant :- **Lakhmoo**

Vs

Respondent :- **State of Chhattisgarh**

Appellant by Shri Abhay Tiwari, Advocate.
State by Shri Prafull Bharat, Panel Lawyer.

JUDGEMENT
(passed on 13/05/2005)

The instant appeal has been preferred by the appellant under Section 374 (II) of the Code of Criminal Procedure as he has been convicted by the IIIrd Additional Sessions Judge, Bastar vide order dated 06.09.1999 passed in Sessions Trial No.183/1998 holding the appellant guilty of offence under Section 307 of the Indian Penal Code and convicted him by rigorous imprisonment of ten years and fine of Rs. 5,000/-, in default of fine to further undergo rigorous imprisonment of one year.

2. Brief facts necessary for adjudication of this appeal are that the appellant is the nephew of complainant namely Sadhu and he resided with him. The complainant Sadhu lodged a report on 19.06.1997 stating that the appellant left his house on 18.06.1997 without informing him and therefore, he ran after him to catch him whereupon the appellant snatched the axe from one Lachchu and assaulted him on his neck and as a result the complainant fell on the floor and thereafter Lachchu snatched his axe from the appellant. The complainant was taken to the police station where report of Ex.P/1 was registered. The complainant was sent for medical examination. The axe and clothings were seized during investigation and the same were sent for chemical examination. Thereafter, diary statement of the complainant was recorded and chargesheet was filed against the appellant. After committal of the case by the Judicial Magistrate First

Class, charge under Section 307 of the IPC was framed and the prosecution examined in all eight witnesses in support of his case and the learned trial Court after conducting examination of the appellant convicted him as mentioned above. Hence, this appeal has been preferred by the appellant.

3. Learned counsel for the appellant has basically challenged the impugned order of conviction on the ground that though there was sufficient evidence available on record to show that the appellant was a person of unsound mind and even then, the Court below has not considered this fact and held that the appellant has not been able to prove his insanity as no medical evidence has been produced on behalf of the appellant. Learned counsel for the appellant further argues that a single blow on the neck of the complainant is attributed to the present appellant, which was not sufficient to cause his death in the ordinary course. In support of his contention learned counsel for the appellant relies upon the judgment of the Apex Court reported in ***1992 CRI.L.J. 609*** in the matter of ***Ramesh Vs. State of U.P.*** and submits that on the basis of causing of single injury in the back of neck, inference of intention to cause murder should not be drawn from the evidence available on record as no motive is attributed to the appellant and the manner in which the offence is alleged to have been committed is suggestive of the fact that the appellant was a person of unsound mind. Learned counsel for the appellant submits that the appellant is in jail since19.06.1997 and as such he has already completed sentence of about eight years.

4. On the other hand, learned counsel for the State submits that taking into consideration that the appellant assaulted the complainant by axe on his neck and further considering the material available on record, offence under Section 307 of the IPC has been proved and no interference is called for in the instant appeal.

5. I have heard learned counsel for the respective parties and have gone through the material available on records.

6. So far as the insanity of the appellant is concerned admittedly there is no medical evidence on record in support of the contention of the appellant that he was a person of unsound mind but the manner in which the

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incident is alleged to have been committed by the present appellant and also the fact that no motive or preparation has been attributed to the appellant to commit the above offence as the whole incident occurred in a spur of moment when the complainant was trying to stop the appellant from going out of his house on the apprehension that he may quarrel with someone, go to show that there was no intention on the part of the appellant to cause death of the complainant.

7. Thus, taking into consideration the evidence of the complainant and the over all material available on record, I am of the opinion that in the peculiar circumstances of the case, the conviction can be altered to be under Section 326 of the IPC. As a result, the appeal succeeds and is allowed in part. The conviction under Section 307 of the IPC is converted to under Section 326 of the IPC and the sentence is reduced to the period already undergone by the appellant. The appellant shall be released forthwith if he is otherwise not detained in connection with some other offence.

Sd/-
Dhirendra Mishra
Judge

KHAN